

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 7682/Del/2019
(Assessment Year : 2010-11)

SCB Steel Pvt. Ltd. (formerly CBS Energy Systems Private Limited) C/o. S. B. Garg & Co., CAs, 20/17, Shakti Nagar, New Delhi-110 007 PAN No. AADCC 2468 C (APPELLANT)	Vs.	ACIT Circle – 5(2) New Delhi (RESPONDENT)
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Assessee by	Shri Sachin Kumar, C.A.
Revenue by	Shri B. M. Singh, Sr. D.R.

Date of hearing:	31.01.2023
Date of Pronouncement:	07.02.2023

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 20.07.2019 of the Commissioner of Income Tax (Appeals)-2, New Delhi relating to Assessment Year 2010-11.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company. AO has noted that assessee filed its return of income for A.Y. 2010-11 on 15.10.2010 declaring income at Rs.70,54,080/-. The return of income was initially processed u/s 143(1) of the Act on 20.06.2011. AO has noted that the case was reopened by issuing notice u/s 148 of the Act on 16.03.2016. Thereafter, the case of the assessee was taken up for scrutiny and consequently assessment was framed u/s 143(3) of the Act vide order dated 30.12.2016 and the total income was determined at Rs.90,54,080/-.

4. Aggrieved by the order passed by AO, assessee carried the matter before CIT(A) who vide order dated 20.07.2019 in Appeal No.10670/16-17 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), Assessee is now in appeal and has raised various grounds challenging the validity of the reassessment u/s 147/148 of the Act and also challenged the additions on merits. Since the grounds raised by assessee are argumentative in nature, the same are not reproduced herein.

5. Before us, Learned AR submitted that assessee in the present appeal is challenging the validity of the assessment order framed u/s 147/148 of the Act. He submitted that before CIT(A) assessee had raised a plea about non service of notice u/s 143(2) & 148 of the Act and had filed written submissions. He submitted that on the grounds raised by assessee, CIT(A) had called for remand report from AO but the same was not submitted by AO.

CIT(A) thereafter, on the basis of material on record decided the issue against the assessee. He submitted that identical issue arose in the case of the sister concern of the assessee namely CBS Steel Pvt. Ltd. wherein CIT(A) has passed an identical order on the same day and had dismissed the appeal of the assessee. He submitted that thereafter assessee had carried matter before the Tribunal and the Co-ordinate Bench of Tribunal in ITA No.7680/Del/2019 order dated 23.12.2022 for the reasons noted in the order had restored the issue to the file of CIT(A) as CIT(A) had passed the order without giving proper opportunity of hearing and after taking into consideration ex-parte evidence. In support of its contentions that the order of CIT(A) in assessee's case and in the case of CBS Steel Pvt. Ltd. are identical and the orders are similar, he pointed to the copy of the order of CIT(A) at page 1 to 9 of the paper book. He also pointed to the copy of the order of Tribunal in that case placed at page 10 to 12 of the paper book. He, therefore, submitted that since the facts of the case in the year under consideration are identical to that of CBS Steel Pvt. Ltd., the matter may be remitted back to CIT(A) to decide the issue afresh providing adequate opportunity of hearing to the assessee.

6. Learned DR on the other hand did not controvert the factual submissions made by Learned AR but however objected to the seeking of second innings by Learned AR.

7. We have heard the rival submissions and perused the material available on record. The assessee in the present appeal is challenging the reassessment order framed by AO and upheld by CIT(A). We find that identical issue arose in the case of the sister concern of the assessee namely CBS Steel Pvt. Ltd. before the Co-ordinate Bench of Tribunal. The Co-ordinate Bench of Tribunal has restored the issue back to the file of CIT(A) by observing as under:

“3. At the time of hearing it came up that amongst other grounds, the assessee has taken a ground no 6 of not being given due opportunity of hearing and relying ex parte evidence.

4. The perusal of the impugned order of the ld CIT(A) shows that the ground No. 1 of the challenge of assessment order before the ld CIT(A) was in regard to non service of notice and not giving opportunity of hearing and taking into consideration ex parte evidence. This was adjudicated by the ld CIT(A) with following finding:-

“The appellant has filed a written submission dated 14.11.2018. As non-service of notice was an important issue raised in the ground, the report was called for from the assessing officer vide letter dated 14.11.2018. After that, a reminder was sent vide letter dated 17.01.2019. Final reminder was sent on 10.07.2019 to submit the report/comments on this issue by 19.07.2019. Reply has not been received in writing except a telephonic message that the case has been transferred out from the present AO. As the appeal is pending since long, the grounds are being decided on the basis of material available on record.”

5. The bench is of considered opinion that where the assessee had taken specific plea in regard to reopening of the case of assessment u/s 147/148 that ex parte evidence collected has been relied and the ld CIT(A) has called for remand report from ld AO, and if the ld AO had not replied then the presumption should have been drawn against the AO and accordingly the issue

adjudicated. On the contrary what the ld CIT(A) has done is that having failed to receive report/ comments of the ld AO, proceeded to decide the appeal on merits and while deciding the issues on merits again observation were made that appellant could not provide satisfactory explanation to the show cause notice before the ld AO.

6. *The bench is of considered opinion that if at all the ld CIT(A) was exercising his co terminus powers then at least an opportunity of hearing in terms of giving opportunity to the assessee to controvert the ex parte evidence relied by the ld AO should have been given. Having failed to do so, the assessee has been prejudiced.*

7. *Consequently, the ground No. 6, raising aforesaid defect in the proceedings of the ld CIT(A) is sustained. The appeal is allowed for statistical purposes and issue is restored to the files of the ld CIT(A) with a direction to give an opportunity of hearing to the assessee on the ground raised by the assessee of not providing opportunity of hearing and to lead evidence and failure of ld AO to provide documents/ statement relied upon by the ld AO.”*

8. We find that the issue raised in the present appeal are identical to that of CBS Steel Pvt. Ltd. In the case of the assessee's sister concern CBS Steel Pvt. Ltd. the Co-ordinate Bench has restored the issue back to the file of CIT(A) for deciding the matter afresh. Since the facts of the case are identical to that of CBS Steel Pvt. Ltd., we for the reasons held by the Co-ordinate Bench in the case of CBS Steel Pvt. Ltd (supra) and for similar reasons restore the issue back to the file of CIT(A) and direct him to pass afresh order after giving adequate opportunity of hearing to the assessee and after considering the matter on record and thereafter deciding the issue in accordance with law. Since the issue is restored back to the file of CIT(A), we are not adjudicating

the issue on merits. **Thus the ground of assessee is allowed for statistical purposes.**

9. **In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open court on 07.02.2023

Sd/-

**(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 07.02.2023
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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI